Remarks

Claims 46-53, 55, 57-59 are pending in the subject application. Applicants acknowledge that claims 54 and 56 have been withdrawn from further consideration as being drawn to a non-elected invention. By this Amendment, Applicant has canceled claims 51 and 52, amended claims 46, 47, 49, 50 and 59 and added new claim 60. Support for the amendments and new claim can be found throughout the subject specification and in the previously presented claims (see, for example, previously presented claim 47, the original claims and page 20 of the as-filed specification). Entry and consideration of the amendments presented herein is respectfully requested. Accordingly, claims 46-50, 55 and 57-60 are currently before the Examiner. Favorable consideration of the pending claims is respectfully requested.

At the outset, Applicants note that the Office Action has rejected claim 45 in a number of instances within the Office Action. In this regard, Applicants note that claim 45 was canceled in a previous amendment and that the inclusion of this claim appears to have been an inadvertent error within the Office Action. Thus, rejections discussed herein address only the pending claims in this matter and the rejections stated in the Office Action, and reiterated here, have been corrected to indicate the claims pending at the time the Office Action was issued.

The Office Action indicates that the WO references cited in the Information Disclosure Statement (IDS) filed on October 24, 2006 were not received. Applicants respectfully assert that the references were submitted to the Patent Office on CD-ROM. However, Applicants submit, herewith, a supplemental IDS, accompanied by the form PTO/SB/08 and copies of the references listed thereon. Applicants request that the references in the IDS be made of record in the subject application. Although the Office Action indicates that the database file registries were considered, Applicants note that form PTO/SB/08 was not returned showing that the Examiner had made the references of record. Applicants respectfully request that the Examiner initial and return forms PTO/SB/08.

The subject specification has been objected to on the grounds that it does not comply with 37 CFR §1.821 through 1.825. Specifically, no sequence identification has been provided for the sequences on pages 18 and 30 of the subject specification. By this Amendment, Applicants have amended the specification to include the sequence identifier number. In addition, a Submission of

Sequence Listing Under §1.821, including a replacement sequence listing on paper and a computer readable format, is attached. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

The specification is objected because it contained embedded hyperlinks or other forms of browser executable code. Applicants respectfully submit that this issue is moot in view of the amendments made to the specification. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

Claims 46-53, 55 and 57-59 are rejected under 35 U.S.C. § 112, first paragraph, as nonenabled by the subject specification. The Office Action indicates that the claims are not enabled because the specification fails to teach how to treat a fibrotic disease comprising administering INSP035. In addition, the Office Action states that the claims are not enabled for a polypeptide that has at least 90% identity to SEQ ID NO:2 and that the specification does not teach how to make and use any variant of INSP035. Applicants respectfully assert that the claims as filed are enabled and traverse the rejection.

Turning first to the issue raised regarding the assertion that the claims are not enabled for a polypeptide that has at least 90% identity to SEQ ID NO:2 and that the specification does not teach how to make and use any variant of INSP035, Applicants respectfully submit that the as-filed specification does enable such claims. For example, the as-filed specification teaches how one skilled in the art is to make muteins of SEQ ID NO:2 (see pages 12-17) and how one skilled in the art can test such muteins for the ability to inhibit TNF-related apoptosis-inducing ligand/Apo2 ligand (TRAIL) activity or mediate a therapeutic effect (see Examples 2 and 5). Thus, it is respectfully submitted that one skilled in the art, in view of the level of skill in the art, the state of the art, and the teachings of the as-filed specification would have been able to make and use the claimed invention; however, in view of the cancellation of this language within the currently pending claims, it is respectfully submitted that this issue is now moot and reconsideration and withdrawal of the rejection is respectfully requested.

Turning to the assertion that the specification fails to teach how to treat a fibrotic disease comprising administering INSP035, Applicants respectfully submit that the as-filed specification enables those skilled in the art to treat fibrotic diseases. In this regard, Applicants note that rejection

of record relates to the ability of one skilled in the art to extrapolate *in vitro* data and the as-filed specification "fails to teach the use of any animal model to discern the *in vivo* effect of administered INSP035 on fibrosis". In this regard, Applicants note that the as-filed specification teaches an animal model suitable for the assessment of INSP035 activity for the treatment of pulmonary fibrosis (see Example 5). Applicants further note that the reference cited in support of the enablement rejection (Yamamoto, *Arch. Dermatol. Res.*, 297:333-344, 2006) teaches that animal models for scleroderma were known in the art on, or before, the earliest effective filing date of the claimed invention (see Yamamoto, page 334, column 1, paragraph 1, citing to about five (5) references published between 1999 and 2002). In this regard, Applicants note that the courts have repeatedly held that "[a] patent need not teach, and preferably omits, what is well known in the art. *Spectra-Physics, Inc. v. Coherent, Inc.*, 827 F.2d 1524, 1534 (Fed.Cir.1987)", *see Falko-Gunter Falkner v. Inglis*, 448 F.3d 1357, 1365, 79 U.S.P.Q.2d 1001 (Fed. Cir. 2006)). *See also In re Chilowsky*, 229 F.2d 457, 460, 108 U.S.P.Q. 321, 324 (C.C.P.A. 1956) ("[T]he applicant 'may begin at the point where his invention begins, and describe what he has made that is new and what it replaces of the old. That which is common and well known is as if it were written out in the patent and delineated in the drawings.'"). Thus, it is respectfully submitted that one skilled in the art would have been able to make and use the claimed invention in view of the state of the art and the teachings of the as-filed specification and reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, first paragraph, is respectfully requested.

Claims 46-53, 55 and 57-59 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Specifically, the Office Action indicates that a representative number of species has not been described. Applicants respectfully assert that there is adequate written description in the subject specification to convey to the ordinarily skilled artisan that they had possession of the claimed invention; however, in an effort to expedite prosecution in this matter subject matter directed to claims directed polypeptides having at least 90% identity to SEQ ID NO:2 have been deleted. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, first paragraph, is respectfully requested.

Claims 46-53, 55 and 57-59 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Claim 59 is indefinite because it recites the limitation "the method according to claim 46, wherein a composition comprising an interferon is administered to the patient simultaneously, sequentially, or separately" with the composition recited in claim 46. With respect to the rejection previously applied to claim 46, Applicants respectfully submit that the claim, as originally presented, was definite. However, Applicants have amended the claim to indicate that the claimed composition is administered in a therapeutically effective amount to a patient having a fibrotic disease selected from lung fibrosis or liver fibrosis. Applicants, thus, respectfully assert that the amended claims are definite and reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, is respectfully requested.

Claims 46-53 and 55 are rejected under 35 U.S.C. § 102(e) as anticipated by Mintz *et al.* (US Published Application No. 2007/0083334). The Office Action states that Mintz *et al.* teach a 163 amino acid polypeptide sequence that is 100% identical to SEQ ID NO:2. Further, Mintz *et al.* teach that purified proteins can be administered to a patient or immunized in a host animal to make antibodies; teach fusion proteins comprising the polypeptide sequence; teach that fusion proteins containing an Fc region can be purified using a protein A column and that they have increased stability; teach that the protein can include those in which a glycosylated residue is added or deleted; teach pharmaceutical compositions comprising the protein, protein encoding sequence or antibodies directed against such protein; and teach that pharmaceutical compositions of the invention may also include a therapeutic agent such as interferon-beta. Applicants respectfully assert that the Mintz *et al.* reference does not anticipate the claimed invention as it fails to teach the administration of a therapeutically effective amount of a polypeptide comprising SEQ ID NO: 2 to a patient having a fibrotic disease selected from lung fibrosis or liver fibrosis. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(e) is respectfully requested.

Claims 46 and 49-52 are objected to because they contain non-elected subject matter. By this Amendment, the claims have been amended to delete the non-elected subject matter. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

It should be understood that the amendments presented herein have been made solely to expedite prosecution of the subject application to completion and should not be construed as an indication of Applicants' agreement with or acquiescence in the Examiner's position. Applicants expressly reserve the right to pursue the invention(s) disclosed in the subject application, including any subject matter canceled or not pursued during prosecution of the subject application, in a related application.

In view of the foregoing remarks and amendments to the claims, Applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

Applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

/FRANKCEISENSCHENK/

Frank C. Eisenschenk, Ph.D.
Patent Attorney
Registration No. 45,332
Phone No.: 352-375-8100
Fax No.: 352-372-5800
Address: P.O. Box 142950
Gainesville, FL 32614-2950

FCE/jb/sl

Attachments: Supplemental Information Disclosure Statement
Submission of Sequence Listing and Statement
New pages 1-8 (Sequence Listing)